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 17 DOLLAR TREE STORES, INC.

18
 19
 UNITED STATES DISTRICT COURT
 20
 NORTHERN DISTRICT OF CALIFORNIA

21
 22 KASSONDRA BAAS and KELLY
 23 LOFQUIST, individually and on behalf of all
 others similarly situated,

CASE NO. C 07-03108 JSW (ENE)

**JOINT CASE MANAGEMENT
 CONFERENCE STATEMENT**

DATE: October 19, 2007
 TIME: 1:30 p.m.
 DEPT: Ctrm. 2, 17th Floor
 JUDGE: Hon. Jeffrey S. White

COMPLAINT FILED: June 13, 2007
 TRIAL DATE: No date set.

24 Plaintiffs,

25 v.

26 DOLLAR TREE STORES, INC.,

27 Defendant.

1 (1) Jurisdiction and Service:

2 This Court has jurisdiction under the Class Action Fairness Act of 2005
 3 ("CAFA") and under 28 U.S.C. § 1331 as the Complaint pleads a claim under the Fair
 4 Labor Standards Act, 29 U.S.C. § 207 (a) (1). Jurisdiction is not contested. The named
 5 Defendant, Dollar Tree Stores, Inc. ("Dollar Tree") has been served. No counterclaim
 6 has been filed.

7 (2) A Brief Description Of The Events Underlying The Action:

8 Plaintiff Kassondra Baas (formerly Kassondra Bassignani), worked for
 9 Dollar Tree, primarily at its Rohnert Park, California location, from October 2005 through
 10 January 2007. Plaintiff Kelly Lofquist also worked for Dollar Tree, primarily in the
 11 Rohnert Park, California location, from August 2006 through February 2007. Both
 12 Plaintiffs worked first as sales associates and then as Assistant Store Managers.
 13 Defendant alleges that Plaintiffs were terminated for attendance and other performance
 14 issues

15 Plaintiffs allege that their time records, and the records of other Dollar Tree
 16 hourly employees were changed by their Store Manager, at the direction of Dollar Tree
 17 District Managers and others who Plaintiffs allege to be managing agents of Dollar Tree,
 18 to reduce overtime or hours worked. Defendant denies such allegation and states that
 19 its promulgated and enforced policy is to record and pay for all hours worked in
 20 accordance with applicable legal requirements. Defendant disagrees with Plaintiffs'
 21 assertion that the District Managers are managing agents of Dollar Tree, and further
 22 asserts that its managers have been repeatedly informed of Dollar Tree's policy to pay
 23 for all time worked. Plaintiffs allege that such electronic time card manipulation
 24 occurred in the District in which the store where they worked was located and throughout
 25 California. Plaintiffs allege this case on a class basis; the class is pled as including all
 26 current and former non-exempt employees employed in California since June 13, 2003
 27 (a period of four years prior to the filing date of the Complaint.) Defendant denies such
 28

1 allegations, and asserts that because the governing policy and practice is to pay for all
 2 time worked, a class action is not appropriate.

3 (3) The Principal Factual Issues Which The Parties Dispute:

4 (a) Whether Plaintiffs' recorded time was changed to reduce their
 5 wage entitlement.

6 (b) If Plaintiffs' time was so changed, at whose instigation did
 7 that occur.

8 (c) Whether either Plaintiff utilized the various complaint
 9 procedures established by Dollar Tree to raise their allegations while they were still
 10 employed.

11 (d) What is the policy of Dollar Tree regarding alterations of
 12 electronic time records.

13 (e) Whether the District Managers, and/or others who Plaintiffs
 14 allege to be managing agents of Dollar Tree, were directing the alteration of electronic
 15 time records of other California Dollar Tree store employees.

16 (f) How has any Dollar Tree policy on this issue been distributed
 17 and enforced.

18 (g) Whether Plaintiffs' allegations, in whole or in part, are
 19 amenable to class treatment.

20 (h) Whether Plaintiffs can establish elements essential to prove a
 21 fraud claim.

22 (i) The amount and nature of damages, if any.

23 (4) The Principal Legal Issues Which The Parties Dispute:

24 (a) What are the legal standards applicable to Plaintiffs'
 25 allegation that Defendant failed to pay wages for all time worked.

26 (b) What are the legal standards applicable to establishing a
 27 "willful" failure to pay under Labor Code Section 203.

28

(c) What California Labor Code penalty provisions, if any, are applicable to Plaintiffs' claims. How, if at all, does the pleading of an FLSA claim impact such California provisions.

(d) What are the applicable statutes of limitations concerning each of Plaintiffs' claims.

(e) Whether Plaintiffs may bring this case as a class action under Rule 23 of the Federal Rules of Civil Procedure.

(f) What is the legal interplay between claims brought under Rule 23 and the opt-in provisions of a FLSA claim.

(g) Whether Plaintiffs may bring this case as a class and/or representative action under California Business & Professions Code Section 17200 et seq.

(h) What are the legal requirements for proving a fraud claim, both individually and on a class basis.

(i) Whether Plaintiffs may use alternate theories such as a claim for unjust enrichment in the context of this case.

(j) What are the available damages under each of Plaintiffs' claims.

(k) What is each Party's entitlement to attorneys' fees.

(I) What are the legal standards applicable to Plaintiffs' claims for injunctive relief.

(5) Motions:

Defendant filed a motion to dismiss and motion to strike in response to the Complaint. The Court's Order Granting in Part and Denying in Part such motion was filed on 8/29/07. The operative Complaint is Plaintiffs' Second Amended Complaint filed on 9/20/07. Defendant filed its Answer to the Second Amended Complaint on October 4, 2007.

1 While the Parties are not in a position to anticipate every possible pre-trial
 2 motion as they are still in a very preliminary stage in the litigation, they anticipate
 3 motions relating to class certification/decertification issues and Defendant anticipates a
 4 motion for summary judgment regarding Plaintiffs' individual claims.

5 (6) Amendment of Pleadings:

6 The pleadings are now settled. Neither Party anticipates further
 7 amendment.

8 (7) Evidence Preservation:

9 Counsel for both Parties have taken steps to preserve evidence relative to
 10 this case through notification to their respective clients.

11 (8) Disclosures:

12 The Parties have exchanged initial disclosures under Rule 26 of the
 13 Federal Rules of Civil Procedure.

14 (9) Discovery:

15 Defendant's taking of Plaintiff Lofquist's deposition is set for October 15,
 16 2007.

17 Defendant's taking of Plaintiff Baas' deposition is set for October 17, 2007.

18 Plaintiffs have produced documents responsive to requests for production
 19 accompanying the deposition notices.

20 Plaintiffs have stated their intent to depose a Dollar Tree representative
 21 knowledgeable regarding the time recording computer system and Rick Tellstrom, a
 22 District Manager of Dollar Tree with responsibility for the store where Plaintiffs worked.

23 Both Parties will identify other deponents following initial discovery and the
 24 exchange of their initial disclosures. Defendant anticipates serving third party
 25 subpoenas, and both Parties anticipate the exchange of written discovery requests.
 26 Plaintiffs and Defendant agree to conduct discovery according to the parameters and
 27 limitations set forth in the Federal Rules of Civil Procedure. To vary from such
 28 limitations, the Parties agree to meet and confer in an attempt to reach agreement, and

1 in the absence of such an agreement, will seek leave of Court through the Court's
 2 discovery dispute process.

3 Defendant has proposed conducting discovery in two phases with the first
 4 phase involving discovery related to Plaintiffs' individual claims and the propriety of class
 5 certification and the second phase involving the merits of the class claims. Plaintiffs do
 6 not disagree in principle with that approach but note that the Parties may have
 7 disagreements regarding how particular items of discovery should be classified.

8 The Parties are in the process of preparing a Stipulation for Protective
 9 Order relating to employee privacy and proprietary information issues.

10 Class Actions:

11 (a) Plaintiffs' Statement Regarding Class Action Allegations.

12 The specific paragraphs of FRCP 23 under which the action is
 13 maintainable as a class action: Plaintiffs allege that this lawsuit is maintainable as a
 14 class action under FRCP 23(b)(3).

15 A description of the class or classes in whose behalf the action is brought:
 16 Plaintiffs seek to bring this action on behalf of individuals employed by Dollar Tree as
 17 hourly wage store employees in California from June 13, 2003, to the present.

18 Facts showing that the Plaintiffs are entitled to maintain the action under
 19 FRCP 23(a) and (b).

20 Numerosity (Rule 23(a)(2)). Plaintiffs believe, and have alleged, that the
 21 entire class consists of over 100 members.

22 Commonality (Rule 23(a)(2)). There is a well-defined commonality of
 23 interest in the questions of law and of fact involving and affecting the Class members to
 24 be represented in that all of these employees have been harmed by the Defendant's
 25 failure to pay all wages at the time they were required to be paid (or at all), failure to pay
 26 overtime wages, and failure to issue accurate itemized wage statements, in violation of
 27 the *California Labor Code* and applicable Industrial Welfare Commission ("IWC") wage
 28 orders and the *Fair Labor Standards Act.*

1 Typicality (Rule 23(a)(3)). Plaintiffs allege that they are members of the
 2 proposed class and allege the same claims as the proposed class. Plaintiffs allege that
 3 they have no interests that are adverse to those of the other class members. The claims
 4 of Plaintiffs alleged in this Complaint are typical of those claims that could be alleged by
 5 any member of the Class, and the relief sought is typical of the relief that would be
 6 sought by each member of the Class in separate actions. Each member has been
 7 harmed in the same manner as all other Class members by being denied their pay,
 8 denied their overtime wages, and denied the issuance of accurate itemized wage
 9 statements due to DOLLAR TREE'S class-wide practices.

10 Adequacy (Rule 23(a)(4)). Plaintiffs contend that their attorneys, the Edgar
 11 Law Firm, are well-qualified and very experienced in representing Plaintiffs in
 12 employment law as well as class action matters. Additionally, Plaintiffs claim that they
 13 will protect the interests of the class.

14 Predominance and Superiority (Rule 23(b)(3)). Plaintiffs contend that
 15 common issues of fact or law predominate over individual issues. Common issues
 16 predominate with respect to the employees' claims in that all claims arise out of: (a)
 17 Defendant's failure to pay Class members all wages they were owed at the times these
 18 wages were due, or at any time before or after those times; (b) the failure of Defendant
 19 to pay Class members overtime compensation for hours worked in excess of eight (8)
 20 hours per day and/or forty (40) hours per week; and, (c) Defendant's failure to issue
 21 accurate itemized wage statements. Plaintiffs contend that a class action is superior to
 22 other procedures for resolving the dispute because, depending upon the length of
 23 employment with Dollar Tree, the damages suffered by each individual class member
 24 may be relatively small.

25 (b) Defendant's Statement Regarding the Class Action Allegations.

26 Defendant disputes that this case is properly maintainable as a class action
 27 as the Company's policy is to pay for all time worked, a policy it promulgates to all
 28 employees and enforces through, inter alia, terminating any employee found to have

1 engaged in a violation of the policy. An examination of any alleged variance from the
 2 policy requires an examination of individual employee time records and individualized
 3 circumstances. Defendant questions, as a matter of law, the maintainability of a Rule 23
 4 class action in conjunction with an FLSA claim. Finally, Defendant believes that there
 5 may be significant issues of the adequacy of representation on the part of the named
 6 Plaintiffs and/or Plaintiffs' counsel which will be developed as discovery progresses.

7 (10) Related Cases:

8 The Parties know of no related cases.

9 (11) Relief:

10 Plaintiffs seek alleged unpaid wages in the various categories identified in
 11 the Complaint, liquidated damages under the FLSA, penalty assessments under the
 12 California Labor Code, restitution, disgorgement, injunctive relief, punitive damages
 13 (under the fraud cause of action) and attorneys' fees and costs of suit.

14 Defendant seeks dismissal of the action, its costs and attorneys' fees.

15 (12) Settlement and ADR:

16 An ENE session with ENE evaluator Dirk Schenkkkan has been scheduled
 17 for November 12, 2007.

18 (13) Consent To Magistrate Judge For All Purposes:

19 The Parties do not so consent.

20 (14) Other References:

21 The Parties propose no other references at this time.

22 (15) Narrowing of Issues:

23 The Parties are committed to narrowing the issues as much as possible,
 24 although believe that such process can best occur following determination of whether
 25 this case is suitable for class action treatment.

26 (16) Expedited Schedule:

27 Given the class allegations, the Parties do not see this case as suitable for
 28 expedited treatment.

1 (17) Scheduling:

2 The Parties believe that a trial date should not be set prior to the
 3 determination of Plaintiffs' motion for class certification. Plaintiffs intend that such motion
 4 should be brought within six months of the initial disclosure exchange (April 2008).

5 (18) Trial:

6 Plaintiffs have requested a jury trial. Defendant does not request a jury
 7 trial. The Parties are unable to estimate the length of trial prior to the decision on
 8 motion(s) relating to class certification.

9 (19) Disclosure Of Non-Party Interested Entities Or Persons:

10 There are no non-party interested persons known to the Plaintiffs.

11 Defendant filed a Certification of Interested Entities or Persons on July 9,
 12 2007 stating Dollar Tree shareholders as interested parties.

13 Filing Certification:

14 The filer of this document attests that Plaintiffs' counsel concurs in the filing
 15 of this Joint Statement.

16 DATED: October 11, 2007

Respectfully submitted,

EDGAR LAW FIRM

19 By: _____ /S/ Jeremy R. Fietz
 JEREMY R. FIETZ

20 Attorneys for Plaintiffs
 21 KASSONDRA BAAS and KELLY
 22 LOFQUIST

23 DATED: October 11, 2007

Respectfully submitted,

24 KAUFF McClain & McGuire LLP

26 By: _____ /S/ Maureen E. McClain
 MAUREEN E. MCCLAIN

27 Attorneys for Defendant
 28 DOLLAR TREE STORES, INC.

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